WISCONSIN BANKERS ASSOCIATION

November 23, 2010

VIA E-MAIL
Ms. Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW.
Washington, DC 20551
regs.comments@federalreserve.gov
Docket No. R-1336

RE: FRB Docket No. R-1336— Interim Rule Amending Regulation Z: Summary Information Regarding Interest Rates and Payment Changes

Dear Ms. Johnson:

The Wisconsin Bankers Association (WBA) is the largest financial trade association in Wisconsin, representing approximately 300 state and nationally chartered banks, savings and loan associations and savings banks located in communities throughout the state. In addition, WBA has a wholly-owned subsidiary, Financial Institution Products Corporation (FIPCO®), which has provided for nearly three decades loan documentation forms and software to financial institutions located in numerous states. WBA appreciates the opportunity to comment, from the perspective of both a trade association and a forms/software vendor, on the Federal Reserve Board's (FRB) Interim Rule amending Regulation Z. The interim rule requires summary information regarding interest rate and payment changes, intended to implement certain provisions of the Mortgage Disclosure Improvement Act of 2008 (MDIA).

Background

On September 24, 2010, FRB published interim rule changes to Regulation Z to implement the MDIA. Under the interim rule, creditors that extend credit secured by real property or a dwelling must provide summarized information in Truth in Lending Act (TILA) disclosures about interest rates and payment changes. These disclosures must be in tabular format based upon models provided in the rule. The interest rate and payment summary table replaces the payment schedule previously required as part of the TILA disclosure for mortgage transactions. The rule also requires certain additional information be disclosed, when applicable, such as information regarding balloon payments and discounted introductory rates. In addition, the rule requires a statement be included in the disclosures which informs consumers that they are not guaranteed to be able to refinance their loans in the future.

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FRB states that it is issuing an interim rule, rather than a final rule, because it intends to conduct additional testing of this and other disclosure requirements, and may revise these interim provisions further in light of additional testing results.

Summary of WBA's Request

WBA shares the goal of Congress and FRB to improve mortgage loan disclosures; however, we believe the current rulemaking process poses a significant impediment to achieving that goal. For the reasons detailed below, WBA respectfully urges FRB to employ a more orderly and coordinated effort in mortgage regulatory reform. To that end, WBA urges FRB to delay implementation of mandatory compliance with the interim rule and any further rulemaking concerning mortgage lending until after integration of Truth in Lending Act and Real Estate Settlement Procedures Act (RESPA) disclosures has been fully completed, as mandated under the Dodd-Frank Act (DFA).

WBA ardently believes this is critical to carryout the intent of Congress to provide consumer's with improved disclosures in mortgage transactions. Further, we are certain FRB has authority under law to delay implementation in order to carryout Congressional intent.

Under FRB's Broad Authority, FRB Should Deem That The GFE Satisfies the Requirements Of MDIA, Delay Implementation Of The Interim Rule And Any Future Rulemaking And Instead Coordinate Such Rules In Light Of The Dodd-Frank Act Mandate To Combine TILA And RESPA Disclosures.

The purpose of the MDIA and certain provisions of the DFA is to improve disclosures consumers receive in mortgage loan transactions by making them easier to understand rather than to provide disclosures that are confusing or in conflict with one another. Upon passage of the DFA, Congress mandated the Bureau of Consumer Financial Protection (CFPB) to create a single integrated disclosure that satisfies the requirements of both TILA and RESPA. A proposed disclosure must be issued within one year of the CFPB's designated transfer date of July 21, 2011. WBA applauds this effort and understands that this process is already underway. WBA strongly believes that the stakeholders involved in this process must make the integrated disclosure their first priority to carryout Congress' intention to improve mortgage loan disclosures. WBA is very concerned that stakeholders could lose sight of this universal mandate if their efforts are divided among the plethora of other rulemaking initiatives that, in piecemeal fashion, are currently underway. WBA believes it is absolutely critical to take an orderly and coordinated approach in rulemaking to achieve the intention of Congress. WBA expects that the stakeholders would agree with this assertion.

In addition, under the current piecemeal regulatory reform approach, TILA disclosures that have been revised pursuant to the interim rule will have to be revised yet again in light of any final MDIA rule and the finalization of the integrated disclosure. WBA fails to understand how a constantly changing TILA disclosure facilitates a consumer's understanding of the mortgage transaction. WBA believes

that a more orderly and coordinated approach to revision is in the best interest of the consumer.

As more fully described below, WBA urges FRB to delay the MDIA interim rule and any other future rulemaking until the integrated disclosure is finalized. We assert that the FRB has broad authority to do so, and that the MDIA provisions the interim rule is intended to carryout are already satisfied by the current Good Faith Estimate (GFE) under RESPA.

First, WBA has no doubt that FRB has authority to delay implementation of rules and any rulemaking activities that do not carryout Congressional intent or where other regulation has already done so. WBA understands that FRB believes TILA section 105(d) does not override the MDIA provision concerning effective dates and compliance dates; however, we respectfully disagree, and further assert that FRB's analysis overlooks broader authority to delay implementation of rules and rulemaking activities under TILA sections 105(a) and (b), and 104(5), and 12 U.S.C. 4802.

Second, under the authority noted above, WBA urges FRB to recognize that the MDIA requirements the interim rule is meant to implement are already satisfied by the GFE consumers are currently receiving in mortgage loan transactions. Providing yet another iteration of this information in new TILA disclosures, which will overlap with information already provided in the GFE, will only cause confusion and provide potentially conflicting information. This result is a detriment rather than a benefit to consumers' understanding their mortgage transaction. Furthermore, WBA believes that this would be logically inconsistent to do so in light of the Congressional mandate to integrate TILA and RESPA disclosures. Therefore, WBA respectfully urges FRB to deem that the GFE satisfies the requirements of the MDIA, and delay implementation of any future rulemaking until after the integrated TILA-RESPA disclosure has been finalized.

Implementation Of The Interim Rule And Any Future Rulemaking Should Be Delayed Due to Extensive Implementation Difficulties And Costs Associated With The Current Pace, Volume and Piecemeal Regulatory Reform Effort.

For nearly a year, FRB and other federal agencies have engaged in massive reformation of mortgage lending regulations including major changes under TILA, HOEPA, RESPA, and the SAFE Act. These initiatives have stretched compliance capabilities in institutions to the limit, and are greatly increasing compliance and operation costs. In fact, over the last year, the number of member calls WBA has received concerning mortgage compliance matters alone have nearly tripled. A common theme expressed by member institutions of all sizes is uncertainty, frustration and confusion resulting from the pace, volume and piecemeal fashion with which mortgage rules are changing. We routinely hear that it is difficult, if not impossible, to track, analyze, and implement these very complex and sometimes conflicting changes. Compliance can be extremely difficult to achieve in the moving target environment created by this tidal wave of changes. Adding even more layers of regulation to this already challenging environment, again, makes implementation difficult if not impossible. These difficulties alone, without taking into consideration

the associated significant expenditures for hiring additional compliance personnel and purchasing of resources, undoubtedly threaten the availability of sound housing finance options from our members. In fact, as discussed later, FIPCO, along with its software vendor, Wolters Kluwer Financial Services (WKFS), will not be able to support certain traditional mortgage transactions in their software products due to lack of guidance (and therefore lack of certainty) in the interim rule on how to properly disclose those products. These difficulties are common to all software vendors. As a result, institutions using these software products will not be able to offer those housing finance options. WBA emphatically believes that the more reasoned approach is for FRB to exercise its broad authority to deem the GFE as fulfilling the requirements of the MDIA, and delay implementation of the interim rule and any future rulemaking until after the integrated TILA-RESPA disclosure has been finalized so that mortgage loan disclosures will be harmonized.

Implementation Of The Interim Rule And Any Future Rulemaking Should Be Delayed Because The Rule And Model Disclosures Fail To Address Or Inadequately Address Certain Loan Structures, Thereby Reducing Sound Housing Finance Options Available To Consumers.

As mentioned above, the interim rule does not address, or inadequately addresses, several traditional mortgage financing options currently available to consumers. The lack of guidance creates uncertainly concerning proper disclose of such loans and will force lenders to discontinue offering them rather than risking violation of TILA and Regulation Z, and corresponding penalties. The risk is even greater for rescindable transactions because inaccurate disclosure of what WBA assumes are material terms would mean the consumer did not receive all the material disclosures required under Regulations Z for purposes of rescission. If a consumer does not receive all the material disclosures and the transaction is consummated, the consumer would have the right to rescind for three years following consummation. WBA members and FIPCO customers are very focused on providing consumers with accurate information and timely, compliant disclosures. FIPCO and WKFS have thus far identified the types of transactions listed below that will not be supported in their software because they are either not addressed or inadequately addressed in the interim rule. As we continue to work through the interim rule, the list could very well expand.

- Loans where the interval for principal payments varies from the interval for interest payments.

- Principal reduction loans.

- Adjustable Rate mortgage loans in which the interest rate causes an increase in the loan term.

- Adjustable rate mortgage loans in which the interest rate causes an increase in the amount of the final payment.

WBA and FIPCO are also gravely concerned about proper disclosure of multiple-advance construction loans which have an interest- only period, that are calculated and disclosed pursuant to Appendix D of Regulation Z.

Under the Appendix, the creditor must either make a statement that interest is payable on the amount advanced or disclose the range of payments. The interim rule does not expressly contemplate disclosure of either option. Absent clear guidance under the rule, creditors will either be forced to discontinue this type of financing or face the risks described earlier. WBA and FIPCO are very concerned about the predicament that the interim rule presents, as these types of loans are extremely common, are in demand and will continue to be in demand. FRB should provide specific guidance on how these disclosures should be made to comply with both the MDIA and Appendix D. At minimum, creditors should be able to use Appendix D when determining proper disclosures and calculations under the interim rule.

In addition, WBA believes that there are other technical difficulties with the interim rule that the FRB would need to address before mandatory compliance should ever be imposed. To date the issues listed below would need to be addressed. FRB must recognize that any clarification on these issues will necessitate adjustment to programming of software and forms and, therefore, adequate time will be required to make such adjustments.

- For interest-only adjustable rate mortgage loans (ARMs) whose rates may adjust to the maximum interest rate before the end of the interest only period, the interim rule does not clearly require a column showing the maximum payment that will result at the time the first principal and interest payment is due. The final rule should require a column showing the maximum payment. The final rule should also provide different column headings to clearly distinguish between the column showing the first time the maximum rate may be reached and the column showing the first time the maximum payment may be reached.

  Note: The preamble at 75 Fed. Reg. 58475-58476 indicates that section 226.18(s)(2)(i)(C) applies to an adjustable rate interest-only loan and requires that when the scheduled payment increase does not coincide with a scheduled interest rate adjustment the creditor must—(1) include a column that discloses the interest rate that will apply at the time of payment increase, and (2) describe that column as "first increase" or "first adjustment." This instruction reflects the incorrect assumption that the first principal and interest payment will be due on or before the first rate adjustment. Moreover, as drafted, section 226.18(s)(2)(i)(C) only applies to "payment increases as described in paragraph (s)(3)(i)(B)," and because that paragraph only applies to loans where "all periodic payments will be applied to accrued interest and principal" it does not appear that it covers interest-only loans. Section 226.18(s)(3)(ii), which describes how to disclose interest only payments, does not appear to independently require a separate column for when the first principal and interest payment is due. It merely refers back to the interest rates required to be disclosed under 226.18(s)(2)(i).

- On some interest-only loans, the date of the first principal and interest payment will be one month after the date that the rate adjusts to a rate disclosed in the maximum interest rate in the first five years column or the maximum rate ever column. In this situation there is a direct conflict in the provisions of the interim rule as to whether the date shown in the column should be the date that the rate changes or the date one month later when the corresponding monthly principal and interest payment is due. Section 226.18(s)(2)(B) indicates that the date of the rate change should be shown in the column while Section 226.18(s)(3)(ii)(B) indicates that the date that the payment is due should be shown.

- Comment 18(s)(2)(i)(B)-2 states that the maximum interest rate during first five years column need not be shown if an ARM has no interest rate cap other than the maximum rate cap. The comment should further state that this column is also not necessary if there is no rate adjustment during the first five years or if the rate may increase to the maximum rate ever at the first adjustment. In these situations providing a five year column would be confusing. When there is no adjustment during the first five years, the introductory rate & monthly payment column already will show that the introductory rate will be in effect for five years or more. When the loan's first adjustment will occur within the first five years but no rate cap other than the maximum rate cap will apply to that adjustment, the introductory rate & monthly payment column will show the introductory rate remaining in effect until the first adjustment and the maximum ever column will show that the loan may reach the maximum rate ever within the first five years of the loan, on the date of the first adjustment.

- The interim rule is not at all clear how specific the dates shown in the columns must be. Must creditors show the day, month and year? Or must they show the month and year, or perhaps just the year? We note that the interim rule does not provide completed examples, but the August 2009 proposal had some examples with just the year filled in. This previous example leads to uncertainty regarding the specific requirement of this provision.

- In instances where an escrow account is established for property taxes, the interim rule requires an estimate of the escrow amount to be disclosed for each column that appears in the table. However, the amount of property taxes will be the same for each column because there is no way to predict future property values, and therefore, future property tax amounts. While labeled as an estimate, the amount nonetheless is inadvertently misleading, with each passing year. The MDIA does not require this disclosure. In addition, information about escrow payments is provided to the consumer in other documents. WBA therefore suggests that this component of the table be removed.

- As noted above, WBA believes that information concerning a required escrow should not appear in the table. Hence, WBA also believes that instances where escrow and/or mortgage insurance is not required on a loan should not appear in the table. If FRB continues to include this information, it is not clear whether the "Estimated Taxes + Insurance (Escrow)" row and the bullet point on mortgage

insurance should or should not appear. WBA also suggests there be some kind of notation that such items are not required on the loan.

- The Interim Rule at Section 226.18(s)(2)(iii) and Comment 18(s)(2)(iii)(B)-1 concerning the "place in sequence" disclosure assume that when the initial rate is discounted, it will adjust to the fully indexed rate at the first adjustment. This assumption is not accurate if the amount of the discount is greater than the interest rate cap that will apply at the first adjustment. As an example, assume that a loan's initial rate is fixed for the first three years and will adjust annually thereafter and each adjustment is subject to a 2% interest rate cap. In this example, the initial rate of 2% is discounted by 4% from the fully-indexed rate of 6%. In this case the loan has a discounted introductory rate of 2% that ends after three years. In the fourth year, even if market rates do not change, this rate will increase to 4% (which is not the fully-indexed rate). In the fifth year (which is not the place in sequence from the expiration of the introductory rate), even if market rates do not change, this rate will increase to 6%. Introductory Rate Model Clause H-4(I) does not accommodate showing that it will take more than one adjustment to reach the fully-indexed rate.

- WBA requests that FRB provide further clarity regarding the following points:

    - The APR, Finance Charge and Total of Payments disclosures should continue to be calculated using the same assumptions as the current payment schedule, notwithstanding the fact that the payment schedule will no longer be disclosed.

    - As long as the length of the first payment period falls within the minor irregularities rule in section 226.17(c)(4), then a rate or payment increase occurring on the date of the 60th monthly payment need not be reflected in the disclosure of the maximum rate and corresponding payment during the first five years after consummation.

    - Mortgage insurance premiums need to be calculated in two ways, just like the interest and principal payments for the loan. For the interest rate and payment summary a "worse case" amortization schedule should be used. For the mortgage insurance premiums included in the APR, Finance Charge and Total of Payments disclosures, the amortization schedule used for the current payment schedule should continue to be used.

    - Creditors will not be subject to civil liability or extended rights to cancel for failure to provide the payment schedule disclosure.

WBA believes that these various outstanding issues—especially those concerning the sufficiency of model forms to cover all possible loan scenarios—must be addressed before FRB makes compliance mandatory. At minimum, compliance with the regulations should be optional until all such details are addressed. WBA still emphatically believes that the more reasoned approach is for FRB to exercise its broad authority to deem the GFE as fulfilling the requirements of the MDIA, and

delay implementation of the interim rule and any future rulemaking until after the integrated TILA-RESPA disclosure has been finalized so that mortgage loan disclosures will be harmonized.

Implementation Of The Interim Rule And Any Future Rulemaking Should Be Delayed Because Software And Other Systems Upon Which Lending Institutions Rely Cannot Necessarily Be Updated In The Allotted Timeframe.

FRB must understand that the pending changes are major, and require significant implementation resources. All the reform changes being imposed require alterations to the mortgage finance business model, and fundamental changes to a generation of systems which support it. Loan origination software systems simply cannot adapt as quickly as, nor are they as agile as, FRB appears to assume. The systems that ensure proper compliance with regulations and that generate the disclosures are interactive rather than isolated; making one change, regardless of how limited, will affect other processes and results, and produce varying difficulties across all product lines.

As a software and forms vendor, FIPCO can attest to the complexity of preparing for regulatory changes. While we would love to simply "flip a switch" to produce immediate, compliant results with new regulations, that is far from the reality of achieving compliant results.

The interim rule provides an example of the complexities that are associated with preparing software for a regulatory change. In this case, new programming code and calculations along with new data entry fields must be developed and tested, to ensure compliance with the new requirements. And, of course, existing programming code and calculations that are not to be affected by the new changes must be tested to ensure that they have not been improperly affected (regression testing). Because of the interactive nature of software design (e.g. a single data entry session is used in FIPCO software to generate applicable TILA *and* RESPA disclosures), regression testing is far reaching rather than isolated to a specific form, calculation or regulation.

In addition, the interim rule has caused FIPCO to develop 25 new TILA disclosures, when previously there were only four. And, if the FRB does not delay implementation of the interim rule and instead provides guidance on a number of common transactions that the rule fails to address or inadequately addresses, creation of yet more forms may be necessary. The reason new forms are being developed is that most, if not all software products cannot generate a table graphic onto a form as a transaction is being processed. Instead, the form must have a preprinted table graphic to accommodate only the appropriate number of columns, and applicable information. To illustrate, FIPCO is currently developing the following type of forms for early TILA and final TILA disclosures for non credit sales and early TILA and final TILA disclosures for credit sales: (1) fixed rate form with one column; (2) fixed rate form with two columns; (3) adjustable rate form with two columns; (4) adjustable rate form with three columns; (5) adjustable rate form with four columns; and (6) adjustable rate form with five columns. In addition, we must now have a separate TILA disclosure form for transactions that must continue to disclose the payment

schedule under 226.18(g). Since negative amortization loans are typically not made by WBA members and FIPCO software users, FIPCO is not developing what would otherwise be yet another set of forms.

Disclosure of transactions under the interim rule is extremely complicated from FIPCO's perspective. The rule has many complex components that ultimately drive which form must be used in a transaction and what information must flow into it. Ensuring the proper form appears in the software for the particular terms and features of a given transaction is an extremely complicated, time-consuming undertaking. Making certain that proper and accurate information flows into the proper document is an even more complicated, time-consuming undertaking.

In fact, as of the date of this letter, FIPCO has spent over a thousand hours analyzing the interim rule, developing new forms, identifying new programming code requirements, and developing programming and delivery strategies. This time does not include actual hands-on time we will spend in developing, implementing and testing our own programming requirements, because FIPCO has not yet taken delivery of test versions of the updated software from our vendor. Once those deliveries begin, we estimate that we will spend many more thousands of hours before the product is delivered to our users. These estimates do not include the time spent by our vendor in developing and delivering the product to us for our own programming process. Nor does it include the time our users will spend on loading the software, setting up new values in the software, testing the software, and training personnel to use the software. And, WBA and FIPCO would like to share that, from recent past experience with other MDIA changes and changes under RESPA, we are absolutely certain that the 120 hour estimate FRB has calculated for institutions to update their systems and internal procedure manuals, and to provide training, is woefully low.

While it is not possible to describe every machination a software vendor employs and the difficulties it encounters in making changes to software, it is clear that it takes significant time and resources to bring such changes to market. The time, effort and complexity of this process is obviously compounded when multiple changes take place concurrently or within a relatively short period of time. And, if regulatory changes are not harmonized and coordinated, the process is even further compounded and fraught with uncertainty. The mandatory compliance date of January 30, 2011, very simply put, fails to provide an adequate amount of time to complete the process necessary to bring a product to market which supports as many types of traditional, common loan products as possible. This means fewer sound housing finance options for consumers. WBA and FIPCO do not believe that this is what Congress had in mind when it passed the MDIA and DFA.

If FRB does not delay implementation, and instead makes adjustments to the interim rule, WBA urges FRB to delay mandatory compliance for the entire rule for at least 18 months following issuance of the final rule so that systems may be adjusted yet again. However, WBA still emphatically believes that the more reasoned approach is for FRB to exercise its broad authority to deem the GFE as fulfilling the requirements of the MDIA, and delay implementation of the interim rule and any future rulemaking

until after the integrated TILA-RESPA disclosure has been finalized so that mortgage loan disclosures will be harmonized.

Conclusion

The interim rule has raised a number of issues for which clarification would be required. Having said that, WBA believes that the GFE already provided to consumers in these transactions satisfies the requirement under MDIA that the interim rule attempts to implement. For these and other reasons detailed above, WBA strongly urges FRB to deem that the GFE satisfies the requirements of MDIA, and delay implementation of the interim rule and any future rulemaking, and instead coordinate such rulemaking with the changes mandated by the DFA to integrate TILA and RESPA disclosures so that mortgage loan disclosures will be harmonized.

WBA would like to acknowledge the significant effort FRB has set forth in issuing the interim rule in this very challenging time of massive legislative and regulatory change. WBA appreciates the opportunity to comment on this very important matter.

Sincerely,

Kurt R. Bauer
President/CEO